



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/162904

PRELIMINARY RECITALS

Pursuant to a petition filed December 24, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on March 10, 2015, at Waukesha, Wisconsin.

The issues for determination are whether the Petitioner's appeal is timely and, if so, whether the agency properly determined the Petitioner was not eligible for MA/FC benefits in October and November, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Rebecca Tollefson

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. Petitioner has been institutionalized since April 29, 2010.

3. On August 11, 2014, the agency issued a notice to the Petitioner that a renewal for healthcare benefits must be completed by September 30, 2014 for benefits to continue. The notice informed the Petitioner that a failure to complete the renewal by September 30, 2014 could result in a delay or termination of benefits. On August 29, 2014, the agency issued a renewal and case summary and again advised the Petitioner of the need to complete the renewal by September 30, 2014.
4. On September 17, 2014, the agency issued a Notice of Decision informing the Petitioner that his healthcare benefits would end effective October 1, 2014 if his renewal was not completed by September 30, 2014. The notice also informed the Petitioner of the right to a hearing and that an appeal must be filed no later than November 17, 2014.
5. On September 24, 2014, the Petitioner's renewal was submitted to the agency. On September 29, 2014, the agency processed the Petitioner's renewal.
6. On October 6, 2014, the agency issued a Notice of Proof Needed requesting information and verification regarding the Petitioner's intent to return to his home. The due date for the verification was October 15, 2014 with an extension granted to October 24, 2014.
7. On October 24, 2014, the agency received a verification from the Petitioner's authorized representative that the Petitioner intended to return home.
8. On October 28, 2014, the agency issued a second Notice of Proof Needed requesting verification of the Petitioner's ability to return to his home. The due date for the verification was November 10, 2014.
9. On November 11, 2014, the agency issued a Notice of Decision informing the Petitioner that his benefits would end effective November 1, 2014 due to failure to provide requested verification.
10. On November 14, 2014, the agency received a statement from the Petitioner's doctor that the Petitioner is not able to return to his home.
11. On November 20, 2014, the agency received a statement from the Petitioner's authorized representative that she will attempt to sell the Petitioner's home in the near future.
12. On December 15, 2014, the agency received verification of a sales agreement for Petitioner's home.
13. On December 30, 2014, the agency issued a notice of decision informing the Petitioner that he was eligible for healthcare benefits for December, 2014 with a patient liability of \$968.67 and \$993.67/month effective January 1, 2015.
14. On December 24, 2014, an appeal was filed on Petitioner's behalf with the Division of Hearings and Appeals.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statute, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also Medicaid Eligibility Handbook (MEH), Chapter 29.

A. Timeliness

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wis. Stats. § 49.45(5). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, the agency issued a Notice on September 17, 2014 notifying the Petitioner that benefits would be denied effective October 1, 2014 if the renewal was not completed by September 30, 2014. The deadline for appealing that determination was November 17, 2014. Though the Petitioner received extensions for the completion of the renewal, those extensions did not change the fact that any eligibility determination made by the agency would be effective October 1, 2014. Therefore, the negative action was October 1, 2014 and the appeal deadline was November 17, 2014. The Petitioner needed to file an appeal by that date to preserve the right to have the case heard on its merits. The Petitioner's appeal was filed on December 24, 2014. Thus, it was untimely as to the agency's determination to close the Petitioner's case effective October, 2014, and no jurisdiction exists for considering the merits of the case.

As for the action by the agency effective November 1, 2014, the Petitioner's appeal is timely.

B. Denial for November 1, 2014

The negative action noticed in the agency's November 11, 2014 Notice of Decision is based on the Petitioner's failure to provide requested verification by the due date. Specifically, on October 28, 2014, the agency requested additional information to complete the renewal and notified the Petitioner that the information must be submitted by November 10, 2014. When the information was not received, the agency issued the November 11, 2014 notice informing the Petitioner that benefits ended November 1, 2014 due to failure to provide the information.

The requested information was provided by the Petitioner on November 14, 2014. A case may be re-opened without the filing of a new application for up to three months for individuals whose eligibility ended because of a late renewal for EBD MA and Institutional MA. Medicaid Eligibility Handbook, §3.1.6. The late submission of verifications is considered a request for health care. Therefore, the Petitioner's late submission of verification on November 14, 2014 is considered a request to re-open healthcare benefits.

Based on the testimony, the agency denied the Petitioner's request for healthcare effective November 1, 2014 based on the Petitioner being over the asset limit. The Petitioner's countable assets included his home. A home is considered exempt from the asset determination if the Petitioner has intent to return to the home. MEH, § 16.8.1.3. In this case, the agency received verification on November 14, 2014 that the Petitioner is unable to return home. The Petitioner's representatives argue that, despite the Petitioner's inability to return home, he expressed an intent to return home. The regulations, they argue, only require an expression of intent.

I conclude that the Petitioner's argument is without merit. There is no dispute that the Petitioner was not capable of returning to his or her home in November, 2014. The fact that the Petitioner and his representative continued to expressed a desire or intent to return home is an unreasonable basis for continuing to allow for a home maintenance deduction when the capability of returning home does not exist. The intent of the regulation was to allow for a deduction when it is reasonable to assume that the individual will return to the home. It is a way to allow a person to maintain the home while they are temporarily institutionalized. When it is clear that the person will not return home, the deduction is no longer available.

In this case, the agency received verification in November that the Petitioner could no longer return home. Therefore, the home maintenance deduction was no longer allowed and the Petitioner was over the asset limit. When the agency received information in December that the home was for sale, it was no longer a countable asset and the Petitioner was properly determined to be eligible effective December 1, 2014.

The agency should have issued another notice in November, 2014 with its determination that the Petitioner was not eligible due to being over the asset limit. The notice of November 11, 2014 that the

Petitioner was denied due to lack of a timely renewal was not sufficient as the basis for the denial changed after the late submission of verifications. However, there is no remedy for the lack of notice since the Petitioner's case had already properly closed effective October 1, 2014 and it is clear that the Petitioner was not eligible in November, 2014 due to his home being a countable asset. Therefore, I conclude the agency properly determined that Petitioner was not eligible for benefits in November, 2014.

CONCLUSIONS OF LAW

1. The Petitioner's appeal was untimely with regard to the agency action effective October 1, 2014.
2. The agency properly denied benefits for November, 2014.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

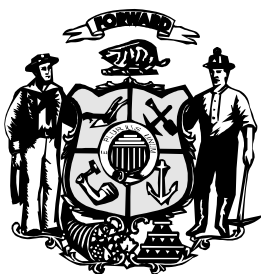
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of April, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 21, 2015.

Waukesha County Health and Human Services
Office of Family Care Expansion